

IN THE COURT OF APPEALS OF IOWA

No. 9-170 / 09-0200
Filed March 26, 2009

**IN THE INTEREST OF S.T.,
Minor Child,**

**H.M.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Lee (South) County, G.R.
Noneman, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Thomas Marion of Norman & Marion, Keokuk, for appellant mother.

Steven Swan of Swan & Associates Law Offices, Keokuk, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Michael Short, County Attorney, and Clinton Boddicker,
Assistant County Attorney, for appellee State.

Kendra Abfalter, Keokuk, for minor child.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

MAHAN, P.J.

Heather appeals the district court's order terminating her parental rights to her seven-year-old daughter, S.T. We affirm.

I. Background Facts and Proceedings.

S.T. is the daughter of Heather and Shawn.¹ This case came to the attention of the Iowa Department of Human Services (DHS) in January 2006. At that time, DHS received a report of abuse and S.T. was removed from Heather's care. Upon DHS investigation, a hair stat test disclosed the presence of cocaine in S.T.'s body. On January 5, 2006, S.T. was adjudicated a child in need of assistance (CINA) and was placed in the custody of her paternal grandparents, where she has remained since that time. A case permanency plan was adopted, and Heather was offered numerous services to reduce or eliminate the adjudicatory harms present in her home.

Heather is a low-functioning individual with an IQ of 64. She has had a history of difficulties participating in reunification services. On April 30, 2008, Heather signed a voluntary consent to termination of her parental rights, but rescinded it the next day. On October 20, 2008, the State filed a termination petition. At the close of the State's evidence at the termination of parental rights hearing, the court asked Heather's counsel if there was any evidence she wished to present:

THE COURT: Mr. Marion, any evidence you wish to present?

MOTHER'S COUNSEL: No, your Honor, my client does not wish to testify and as the Court can evidently see that she's not

¹Shawn voluntarily consented to the termination of his parental rights and does not appeal.

actively resisting; she's not wanting to voluntarily consent out of a personal situation but she's not actively contesting this.

THE COURT: It's my understanding that her primary consideration is she wants to make sure she has contact with the child, with S.T. after, and she's concerned about the wellness of her child.

MOTHER'S COUNSEL: Correct.

The court terminated Heather's parental rights on January 14, 2009, pursuant to Iowa Code section 232.116(1)(f) (2007). Heather now appeals.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.*

III. Issues on Appeal.

A. Reunification Services.

Heather argues DHS failed to provide sufficient services to her during the pendency of the case to promote reunification. Specifically, Heather claims DHS never gave her the opportunity to display her ability to parent S.T. on overnight visitations. A parent's challenge to services by the state should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). Heather fails to indicate that she requested or otherwise challenged the adequacy of services prior to this appeal. We conclude this issue has been waived and do not address it on appeal.

B. Clear and Convincing Evidence.

Heather argues the State failed to prove the grounds for termination by clear and convincing evidence. Heather has been offered numerous services, including family-centered services, supervised visitation, relative placement of the child, parent skill development, mental health evaluations and services, no contact orders, protective payee, court supervision and proceedings, family teams meetings, and DHS supervision to maintain the placement.

Due to her cognitive limitations and mental and emotional instabilities, Heather has had difficulty participating in reunification services, and such services had not been successful in allowing S.T. to return to Heather's care. As the juvenile court stated:

Both the natural mother and father have had a history of erratic and unsuccessful participation in services. Both have very limited parenting abilities and these limited abilities are further degraded by a general lack of cooperation with services offered. . . . Heather has had a history of difficulties in participation in parent skill services and visits.

Heather signed a voluntary consent to termination April 30, 2008, but rescinded it the next day. Her participation in reasonable efforts services has been inconsistent and ineffective. Though she obviously has a subjective love for S.T., she has no real grasp, understanding, or capacity to safely and minimally effectively parent her. Heather's own cognitive limitations, mental and emotional instabilities, and limited abilities to care properly even for herself make it highly unlikely that she can ever develop adequate ability to care for S.T.

S.T. has been out of Heather's home for over three years. Although Heather has accessed services, her effective participation and commitment to accessed services has been minimal. Heather is inconsistent with her visits with S.T. and is regularly late to the visits, cuts them short, or misses them entirely. Heather lacks the ability to care for S.T. and is unable to learn necessary parenting skills.

At the termination hearing, Heather did not resist or contest the termination of her parental rights. Her primary concern was that she would be allowed to maintain some contact with S.T. if her parental rights were terminated. Returning S.T. to Heather's home is not an option. The record clearly supports Heather's inability to provide a safe environment for S.T.

"To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence." *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Clear and convincing evidence supports termination of Heather's parental rights under section 232.116(1)(f), and we affirm on this issue.

C. Arbitrary and Biased Toward Handicapped Individuals.

Heather argues the termination statutes are arbitrary and biased toward handicapped individuals. However, Heather has failed to preserve error on this issue. She did not raise it during the termination hearing or at any time prior to the hearing. Furthermore, we again note that Heather did not resist or contest the termination of her parental rights at the termination hearing. The juvenile court properly found that termination of Heather's parental rights was in the best interests of S.T.

AFFIRMED.